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Ampersand Publishing, LLC d/b/a Santa Barbara News-Press and Graphic Communications Brotherhood of Teamsters Cases 31–CA–028589, 31–CA–028661, 31–CA–028667, 31–CA–028700, 31–CA–028733, 31–CA–028734, 31–CA–028738, 31–CA–028799, 31–CA–028889, 31–CA–028890, 31–CA–028944, 31–CA–029032, 31–CA–029076, 31–CA–029099, and 31–CA–029124

March 17, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

On September 27, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 141. The Respondent filed a timely motion for reconsideration. On May 31, 2013, the Board issued an Order Denying Motion for Reconsideration and Modifying Remedy, which is reported at 359 NLRB No. 127. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit.

At the time of the Decision and Order, and the Order Denying Motion for Reconsideration and Modifying Remedy, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued an order setting aside the Decision and Order and the Order Denying Motion for Reconsideration and Modifying Remedy, and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons

stated in the Decision and Order reported at 358 NLRB No. 141, which is incorporated herein by reference.¹

We have also considered the vacated Order Denying Motion for Reconsideration and Modifying Remedy reported at 359 NLRB No. 127, which we incorporate by reference. We agree with and adopt the findings and rationale set forth therein, and we have modified the Order herein accordingly.²

ORDER

The National Labor Relations Board orders that the Respondent, Ampersand Publishing, LLC d/b/a Santa Barbara News-Press, Santa Barbara, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing letters or other communications to employees from the owner and copublisher offering to provide its attorney to represent employees who are contacted by

¹ We correct the second par. of fn. 2 of the vacated Decision and Order by deleting the reference to Sec. 8(a)(5), because the complaint alleged and we find that the August 22, 2008 memorandum to employees offering them the services of company attorneys violated Sec. 8(a)(1).

In affirming the judge's finding that the Respondent violated Sec. 8(a)(1) when Director of News Operations Don Katich instructed employees to keep confidential the contents of his December 3, 2008 meeting with them, we do not rely on *Crowne Plaza Hotel*, 352 NLRB 382 (2008), a case decided when the Board had only two sitting members. See *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010).

In affirming the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by suspending and discharging Dennis Moran, we find it unnecessary to pass on the judge's additional finding that the Respondent violated Sec. 8(a)(5) and (1) by failing to notify the Union of its suspension and discharge of Moran, failing to offer to bargain about the suspension, and failing to offer to bargain about the discharge decision and its effects.

The judge's recommended Order, as further modified herein, is set forth in full below.

² We affirm and incorporate the Amended Remedy as set forth in the prior Decision and Order, as modified and further explained in the Order Denying Motion for Reconsideration and Modifying Remedy. In affirming and incorporating the rationale of the latter Order, we rely on *Allied Medical Transport, Inc.*, 360 NLRB No. 142, slip op. at 6 fn. 9 (2014), and *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007), rather than *OS Transport LLC*, 358 NLRB No. 117 (2012), and *Jason Lopez' Planet Earth Landscape*, 358 NLRB No. 46 (2012), as support for the notice-reading remedy. We further note that the Board's Order denying the motion for reconsideration relied on *Santa Barbara News-Press*, 358 NLRB No. 155 (2012) (*Santa Barbara III*), concerning the broad cease-and-desist order and notice-reading remedies. The Board subsequently considered that case de novo and adopted the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB No. 155. See 361 NLRB No. 88 (2014).

In affirming the remedial provisions regarding adverse tax consequences and Social Security reporting requirements in the Order denying the motion for reconsideration, we rely on *Don Chavas, LLC, d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). We shall also substitute a new notice in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

Board agents investigating unfair labor practice allegations.

(b) Instructing employees that anything said at an employee meeting concerning employees' terms and conditions of employment is confidential and proprietary, and cannot be discussed by employees outside the meeting.

(c) Transferring work from the bargaining unit to nonunit employees of contract agencies because unit employees formed, joined, or assisted Graphic Communications Conference, International Brotherhood of Teamsters (the Union) or any other labor organization and engaged in protected concerted activities and to discourage employees from engaging in these activities.

(d) Transferring unit work to freelance nonemployees because unit employees formed, joined, or assisted the Union or any other labor organization and engaged in protected concerted activities and to discourage employees from engaging in these activities.

(e) Suspending or otherwise discriminating against any employee because unit employees formed, joined, or assisted the Union or any other labor organization and engaged in protected concerted activities and to discourage them from engaging in these activities.

(f) Discharging or otherwise discriminating against any employee because unit employees formed, joined, or assisted the Union and engaged in protected concerted activities and to discourage them from engaging in these activities.

(g) Unreasonably delaying furnishing the Union with requested information which is relevant and necessary for the Union to perform its duties as the collective-bargaining representative of unit employees.

(h) Transferring unit work from unit employees to nonunit employees of contract agencies and failing and refusing to provide the Union notice and an opportunity to bargain over the decision to utilize the nonunit employees and the effects of the decision on unit employees.

(i) Failing to grant unit employees a merit increase in December 2006 through January 2007, in recognition of work performance during 2006, without providing the Union notice and an opportunity to bargain about the decision not to grant merit increases in this period and its effects.

(j) Failing to grant unit employees a merit increase in December 2007 through January 2008, in recognition of work performance during 2007, without providing the Union notice and an opportunity to bargain about the decision not to grant merit increases in this period and its effects.

(k) Failing to grant unit employees a merit increase in December 2008 through January 2009, in recognition of

work performance during 2008, without providing the Union notice and an opportunity to bargain about the decision not to grant merit increases in this period and its effects.

(l) Unilaterally changing the timing of employee meetings with their supervisors as part of the performance evaluation system around November 2008 without providing the Union notice and an opportunity to bargain about the change and its effects.

(m) Laying off employees without providing the Union notice and an opportunity to bargain concerning the decision and its effects.

(n) Unilaterally announcing a requirement that unit employees produce at least one story per day without providing the Union notice and an opportunity to bargain about the new policy and its effects.

(o) Bypassing the Union and dealing directly with unit employees by offering employee Richard Mineards nonunit terms and conditions of employment.

(p) Bargaining in bad faith with the Union by insisting, as a condition of reaching agreement on a collective-bargaining contract, that the Respondent retain unilateral control over many terms and conditions of employment, thereby leaving employees and the Union with substantially fewer rights and protections than they would have without any contract.

(q) Assigning bargaining unit work to freelance nonemployee Robert Eringer without providing the Union notice and an opportunity to bargain about the work assignment decision and its effects.

(r) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees in the news department, including writers, reporters, copy editors, photographers, and graphic artists employed at the Respondent's Anacapa Street facility located in Santa Barbara, California, but excluding all other employees, guards, confidential employees, supervisors as defined in the Act, as amended, and writers and editors engaged primarily in working on the opinion editorial pages.

The certification year shall extend 1 year from the date that good-faith bargaining begins.

(b) Reimburse the Union for its costs and expenses incurred in collective bargaining from November 13, 2007, until the date on which the last negotiation session occurred.

(c) Make unit employees whole for any losses they may have suffered as a result of the discontinuation of the program of merit pay raises for the performance years 2006–2008 and the change in the timing of employee-supervisor performance evaluation meetings, with interest, in the manner set forth in the remedy section of the judge's decision, as amended.

(d) Make unit employees whole for any loss of earnings or other benefits suffered as a result of the unlawful unilateral use of the nonunit employees of contract agencies or other nonemployees, with interest, in the manner set forth in the remedy section of the judge's decision, as amended.

(e) On request by the Union, and to the extent sought by the Union, rescind the one-story-per-day productivity standard and the unlawful unilateral transfer of unit work to nonunit freelance employees and nonunit employees of contract agencies.

(f) Within 14 days from the date of this order, offer Dennis Moran and Richards Mineards full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(g) Make Dennis Moran and Richard Mineards whole for any loss of earnings and other benefits suffered as a result of the unlawful employment actions against them, with interest, in the manner set forth in the remedy section of the judge's decision, as amended.

(h) Compensate Dennis Moran, Richard Mineards, and other unit employees for the adverse tax consequences, if any, of receiving any lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for each employee.

(i) Within 14 days from the date of this Order, remove from its files any reference to the unlawful employment actions against Dennis Moran and Richard Mineards and, within 3 days thereafter, notify them in writing that this has been done and that the wrongful employment actions will not be used against them in any way.

(j) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel rec-

ords and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(k) Within 14 days after service by the Region, post at its facility in Santa Barbara, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility at any time since July 9, 2007.

(l) Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached notice is to be read by a high-ranking management official or, at the Respondent's option, by a Board agent in the presence of such an official.

(m) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the allegations of the complaint not sustained herein shall be, and they hereby are, dismissed.

Dated, Washington, D.C. March 17, 2015

Mark Gaston Pearce,

Chairman

³ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT issue letters or other communications to you from the owner and copublisher offering to provide our attorney to represent you if you are contacted by Board agents investigating unfair labor practice allegations.

WE WILL NOT instruct you that anything said at an employee meeting concerning employees' terms and conditions of employment is confidential and proprietary and cannot be discussed by employees outside the meeting.

WE WILL NOT transfer work from the bargaining unit to nonunit employees of contract agencies because you form, join, or assist Graphic Communications Conference, International Brotherhood of Teamsters (the Union), or any other labor organization or engage in protected concerted activities or to discourage you from engaging in these activities.

WE WILL NOT transfer unit work to freelance nonemployees because you form, join, or assist the Union or any other labor organization or engage in protected concerted activities or to discourage you from engaging in these activities.

WE WILL NOT suspend or otherwise discriminate against you because you form, join, or assist the Union or any other labor organization or engage in protected con-

certed activities or to discourage you from engaging in these activities.

WE WILL NOT discharge you because you form, join, or assist the Union, or any other labor organization or engage in protected concerted activities or to discourage you from engaging in these activities.

WE WILL NOT unreasonably delay in furnishing the Union with requested information which is relevant and necessary for the Union to perform its duties as your collective-bargaining representative.

WE WILL NOT transfer unit work from unit employees to nonunit employees of contract agencies and fail and refuse to provide the Union with notice and an opportunity to bargain concerning the decision to utilize the nonunit employees and the effects of the decision on unit employees.

WE WILL NOT fail to grant you merit increases for the period December 2006 through January 2009 without providing the Union notice and an opportunity to bargain about the decision and its effects.

WE WILL NOT unilaterally change the timing of employee meetings with their supervisors as part of the performance evaluation system without providing the Union notice and an opportunity to bargain about the change and its effects.

WE WILL NOT lay you off without providing the Union notice and an opportunity to bargain about this decision and its effects.

WE WILL NOT assign bargaining unit work to nonunit freelance employees without providing the Union notice and an opportunity to bargain about the work assignment decision and its effects.

WE WILL NOT unilaterally announce a requirement that you produce at least one story per day without providing the Union notice and an opportunity to bargain about the proposed new policy.

WE WILL NOT bypass the Union and deal directly with you by offering you nonunit terms and conditions of employment for unit work.

WE WILL NOT bargain in bad faith with the Union concerning unit employees' terms and conditions of employment by insisting as a condition of reaching any collective-bargaining agreement with the Union that we retain unilateral control over many terms and conditions of employment, thereby leaving you and the Union with substantially fewer rights and protections than you would have without any contract.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and

conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time employees in the news department, including writers, reporters, copy editors, photographers, and graphic artists employed by us at our Anacapa Street facility located in Santa Barbara, California, but excluding all other employees, guards, confidential employees, supervisors as defined in the Act, as amended, and writers and editors engaged primarily in working on the opinion editorial pages.

The certification year will extend 1 year from the date that good-faith bargaining begins.

WE WILL reimburse the Union for its costs and expenses incurred in collective-bargaining negotiations from November 13, 2007, until the date on which the last negotiation session occurred.

WE WILL make our unit employees whole for any loss of earnings and other benefits resulting from our discontinuation of our program of merit pay raises for performance years 2006–2008 or our change in the timing of employee meetings with their supervisors regarding their 2008 performance evaluations, plus interest.

WE WILL make unit employees whole for any loss of earnings or other benefits resulting from our wrongful unilateral use of nonunit employees to do unit work, plus interest.

WE WILL, on request by the Union, and to the extent sought by the Union, rescind the unilateral changes in terms and conditions of employment that we unlawfully made and restore the status quo ante.

WE WILL, within 14 days from the date of the Board's Order, offer Dennis Moran and Richards Mineards full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Dennis Moran and Richard Mineards whole for any loss of earnings and other benefits resulting from our unlawful employment actions against them, less any net interim earnings, plus interest.

WE WILL compensate Dennis Moran, Richard Mineards, and unit employees adversely affected by our unilateral changes for any adverse income tax consequences of receiving their backpay in one lump sum, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful employment actions against Dennis Moran and Richard Mineards, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that those wrongful actions will not be used against them in any way.

AMPERSAND PUBLISHING, LLC D/B/A SANTA
BARBARA NEWS-PRESS

The Board's decision can be found at www.nlrb.gov/case/31-CA-028589 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

